

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

SCOTT POWELL,

Plaintiff,

vs.

FEDERAL EXPRESS CORPORATION,

Defendant and Self-
Insurer.

Civ. No. 4:23-4143

COMPLAINT

Plaintiff Scott Powell (hereinafter "Plaintiff"), through the undersigned counsel, and for his cause of action against Federal Express Corporation (hereinafter "Defendant and Self-Insurer") states and alleges as follows:

PARTIES

1. Plaintiff is an individual residing in Minnehaha County, South Dakota.
2. Defendant Federal Express Corporation is a corporation which conducts business in South Dakota, with its principal place of business located in another state.

JURISDICTION

3. The amount in controversy exceeds \$75,000.
4. Jurisdiction is based on 28 U.S.C. § 1332, Diversity of Citizenship.

STATEMENT OF FACTS

5. On July 18, 2018, Scott Powell ("Plaintiff") was driving a FedEx freightliner while working for Defendant.
6. Plaintiff was at a complete stop (due to travel congestion in a construction zone) on Highway 212 just outside of Granite Falls, Minnesota, when he was rear-ended by a vehicle driven by Neptali Lagunas.

7. Mr. Lagunas was traveling approximately 55 mph when he crashed into Plaintiff's vehicle, forcing Plaintiff to be thrown back into his seat.

8. As a result of the crash, Plaintiff was injured and damaged and has suffered and will continue to suffer in the future, physical and mental anguish, and has incurred medical expenses, both in the past and in the future, all to Plaintiff's general and special damages.

9. Mr. Lagunas was clearly at fault in causing the rear-end collision in which Plaintiff was injured.

10. Settlement negotiations between Plaintiff and Mr. Lagunas's liability insurer were successful, as Mr. Lagunas's insurer offered the policy limits of \$100,000.

11. However, Plaintiff's injuries exceed the policy limits as provided by Mr. Lagunas's insurer.

12. As such, Defendant as Self-Insurer is responsible for any damages in excess of the policy limits to Plaintiff.

13. Upon Plaintiff's information and belief that Defendant Federal Express Corporation was self-insured at the time of the subject matter in this action.

14. Plaintiff's attorney has attempted to seek insurance information from Defendant, however, Defendant has failed to provide any such information.

**FIRST CAUSE OF ACTION (AGAINST DEFENDANT/SELF-INSURER)
BREACH OF CONTRACT**

15. Plaintiff reincorporates by reference the foregoing paragraphs.

16. It is Plaintiff's belief that Defendant had a certificate of self-insurance at the time of the subject crash.

17. It is Plaintiff's belief that the crash at issue occurred while Defendant's certificate of self-insurance was in force.

18. It is believed that Plaintiff's injuries do not fall under any exclusion set forth in Defendant's certificate of self-insurance.

19. Plaintiff's attorney provided Defendant's attorney with the information necessary for Defendant as Self-Insurer to evaluate Plaintiff's claims, however, Defendant as Self-Insurer has not evaluated Plaintiff's claims.

20. It is Plaintiff's belief that under the terms of the certificate of self-insurance, Defendant as Self-Insurer had a contractual duty to pay for covered losses up to the certificate's limits for injuries sustained as the result of a crash caused by an underinsured motorist.

21. Defendant as Self-Insurer has wrongly denied underinsured motorist coverage for Plaintiff's injuries incurred as a result of the crash with Mr. Lagunas.

SECOND CAUSE OF ACTION (AGAINST DEFENDANT/SELF-INSURER)
BAD-FAITH DENIAL OF CLAIM

22. Plaintiff reincorporates by reference the foregoing paragraphs.

23. Defendant as Self-Insurer owed Plaintiff a duty of good faith and fair dealing implied from its entry into a certificate of self-insurance.

24. Defendant as Self-Insurer, acting without a reasonable basis, has denied underinsured motorist benefits under the certificate of self-insurance that are due to Plaintiff.

25. Defendant's actions, as Self-Insurer, constitute a breach of its duties to Plaintiff in that it failed to act fairly and reasonably toward Plaintiff and demonstrated a significant disregard of Plaintiffs' rights and economic interests.

26. Defendant as Self-Insurer had no reasonable basis for denying Plaintiff benefits under the certificate of self-insurance and had knowledge of, or a reckless disregard of, the lack of a reasonable basis for denying benefits.

27. Defendant's denial as Self-Insurer was intentional and attended by circumstances of oppression, fraud, and malice and was a breach of Defendant/Self-Insurer's duty of good faith and fair dealing toward Plaintiff.

28. Defendant's breach of its duty of good faith and fair dealing as Self-Insurer has caused and will cause Plaintiff to incur attorney's fees in the prosecution of this action.

29. As a direct and proximate result of Defendant's breach of its duty of good faith and fair dealing as Self-Insurer, Plaintiff has suffered and will continue to suffer economic damage and resulting emotional distress.

THIRD CAUSE OF ACTION (AGAINST DEFENDANT/SELF-INSURER)
VIOLATION OF STATE UNFAIR TRADE PRACTICES ACT

30. Plaintiff reincorporates by reference the foregoing paragraphs.

31. By refusing to pay underinsured motorist benefits to Plaintiff as required by the certificate of self-insurance, Defendant as Self-Insurer has violated the provisions of the Unfair Trade Practices Act.

32. Because Defendant as Self-Insurer acted knowingly and willfully in violation of the Unfair Trade Practices Act, Plaintiff is entitled to punitive damages from Defendant as Self-Insurer.

FOURTH CAUSE OF ACTION (AGAINST DEFENDANT/SELF-INSURER)
PUNITIVE DAMAGES

33. Plaintiff reincorporates by reference the foregoing paragraphs.

34. Defendant acted with oppression, fraud, express and implied malice, and a reckless disregard for the interests and rights of Plaintiff by refusing to provide compensation benefits owed to Plaintiff, entitling Plaintiff to an award of punitive damages pursuant to SDCL 21-3-2.

35. Upon information and belief, Defendant engaged in a pattern and practice of acting in bad faith.

FIFTH CAUSE OF ACTION (AGAINST DEFENDANT/SELF-INSURER)
ATTORNEY'S FEES

36. Plaintiff reincorporates by reference the foregoing paragraphs.

37. The denial of full payment of benefits owed pursuant to Plaintiff's underinsured motorist claim was made vexatiously and without reasonable cause, entitling Plaintiff to an award of attorney's fees incurred in an effort to

secure Defendants' compliance as Self-Insurer with the terms of the certificate of self-insurance coverage, pursuant to SDCL 58-12-3.

38. The acts herein complained of further constitute unfair trade practices in the business of insurance under SDCL 58-33-5 and SDCL 58-33-6, entitling Plaintiff to an award of attorney's fees pursuant to SDCL 58-33-46.1.

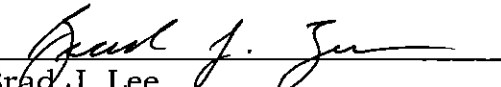
WHEREFORE, Plaintiff prays for judgment against the Defendant as Self-Insurer for all general and special damages suffered by Plaintiff, in an amount to be determined by the jury, together with Plaintiff's costs and disbursements herein, and for such other and further relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Pursuant to the provisions of Federal Rule of Civil Procedure 38, Plaintiff Scott Powell hereby demands a trial by jury of any issue triable of right by jury.

Dated the 27 day of September, 2023.

BEARDSLEY, JENSEN & LEE,
Prof. L.L.C.

By: 
Brad J. Lee
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Attorneys for Plaintiff

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

SCOTT POWELL

(b) County of Residence of First Listed Plaintiff Minnehaha
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Beardsley, Jensen & Lee, Prof LLC, P.O. Box 9579,
Rapid City, SD 57709 - 605-721-2800

DEFENDANTS

FEDERAL EXPRESS CORPORATION

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth In Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. Section 1332

Brief description of cause:

Breach of contract and bad faith

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ - unspecified compensatory, punitive damages & attorney's fees

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See Instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

9-27-2023

Scott Powell

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAJ. JUDGE